IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

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J U D G M E N T

(Chauth Mal VS. State of Rajasthan)

D.B.CRIMINAL APPEAL NO. 505/2003
AGAINST THE ORDER DATED 25.11.2002
PASSED BY ADDL. SESSIONS JUDGE,
RAMGANJ MANDI, DISTRICT KOTA, IN
SESSIONS CASE NO. 45/2001.

Date of Judgment : July 3, 2007

Reportable

P R E S E N T

HON'BLE MR.JUSTICE SHIV KUMAR SHARMA

HON'BLE MR.JUSTICE R.S.CHAUHAN

Mr.Prithviraj Singh Rajawat, for the appellant.
Mr.M.L.Goyal, Public Prosecutor for the State

(PER HON'BLE MR.R.S.CHAUHAN,J)

The alleged murder of Rajkumar, the conviction for offences under Sections 302, 323 and 450 of Indian Penal Code (for short 'the I.P.C.' hereinafter)have brought the appellant before this Court. The appellant is challening the judgment dated 25.11.2002 passed by the Additional Sessions

Judge, Ramganj Mandi, District Kota, whereby the learned Judge has convicted the appellant of aforementioned offences and has sentneced him as under :

For offence under Section 302 :

The appellant has been sentenced to life imprisonment and has been imposed with a fine of Rs.500/- and to further undergo a sentnece of six months of R.I. in default thereof.

For offence under Section 450 :

The appellant has been sentenced to five years of R.I. and has been imposed with a fine of Rs.500/- and to further undergo six months of simple imprisonment, in default thereof.

For offence under Section 323 :

The appellant has been sentneced to six months of simple imprisonment.

2. The brief facts of the case are that on 21.5.2001, Durga Shankar (P.W.1) submitted a written report (Ex.P/1) at the Primary Health Centre, Chechat to A.S.I., Safi Mohammad (P.W.12)

wherein he claimed that in the intervening night of 20.5.2001 and 21.5.2001, his brother, Rajkumar and his son, Ramniwas were sleeping on the roof of the house, while he was sleeping on the ground outside his house. About 3'O clock at night, Chauthmal, (the appellant before us), carrying a stick covered with wires came to the roof of his house and hit Rajkumar on his head. When his son Ramniwas raised a hue and cry, the appellant also hit him on his knees. The complainant and one Dwarakalal (P.W.3) have seen the occurrence. After the incident, both the injured persons, Rajkumar and Ramniwas, were taken to the Primary Health Centre. On the basis of this report, initially the police registered a formal F.I.R., F.I.R No.93/2001, for offences under Sections 307 and 452 I.P.C. However, the doctors at the Primary Health Centre referred Rajkumar for further treatment to the hospital at Kota. During his treatment, Rajkumar expired. Subsequently, the offence under Section 302 I.P.C. was added. During the course of investigation, the appellant was

arrested and produced before the Court. The appellant was charged for offence under Sections 302, 323 and 450 I.P.C. In order to prove its case, the prosecution produced nineteen witnesses and submitted forty-three documents. In his statement under Section 313, the appellant denied the allegations made against him. But, he did not examine any witness in his defence. After going through the oral and documentary evidence, the learned trial Court convicted the appellant and sentneced him as aforementioned. Hence, this appeal before this Court.

3. Mr. Prithviraj Singh Rajawat, the learned counsel for the appellant, has raised a number of contentions before us. Firstly, the prosecution has not come with clean hands to the Court, as there is certain confusion about the place where written report was given to the police; while Durga Shankar (P.W.1) and Ramniwas (P.W.2) claimed that they have lodged the report at Police Station, Chechat, Safi

Mohammad (P.W.12) claimed that the written report was given by Durga Shankar (P.W.1) at the Primary Health Centre. Secondly, according to Durga Shankar (P.W.1) and Ramniwas (P.W.2), intially they were not sure as to who the culprit was. In their cross-examination, they have admitted that intially the people thought that some thieves have entered and have assaulted the deceased. Thirdly, no blood has been found at the place of alleged occurrence. In fact, the body of the deceased was found on the roof of the appellant's house. Forthly, the prosecution has failed to explain as to how the body of the deceased was found at the appellant's roof. Fifthly, the motive for the alleged murder is unclear. According to some witnesses, the appellant had killed Rajkumar only because Rajkumar had told him to return the loan money that he had borrowed from his uncle. According to other witnesses, there were some dispute about land between the appellant and the complainant party. Thus, the motive is disputed in this case. Thus, the prosecution has

not revealed the complete truth before the Court. In fact, the proseuction story is shrouded in mystery.

4. On the other hand, Mr. M.L. Goyal, the learned Public Prosecutor, has argued that the substratum of the prosecution story has a ring of truth. Therefore, it is immaterial as to where the F.I.R. was handed to the police. Secondly, that the presence of Ramniwas (P.W.2) cannot be doubted, as he was injured in the alleged accident. Thirdly, the presence of Durga Shankar (P.W.1) is natural, as he was sleeping in the same house, where the assault occurred. Therefore, they are trustworthy witnesses. Hence, he has supported the impugned judgment.

5. We have heard the learend counsels for both the parties and have perused the impugned judgment and have examined the record.

6. It is, indeed, a settled principle of criminal law that minor contradictions and omissions are not fatal to the prosecution case. Therefore, it is immaterial whether the F.I.R. was handed to Safi Mohammad (P.W.12) at the Police Station or at the Primary Health Centre. What is imperative to note in this case is that the occurrence occurred at 3 o' clock in the dead of the night and the F.I.R. was registered by 5:30 in the morning. Considering the fact that the place of occurrence is about seven kilometres away from Chechat, the nearest place, where primary health centre was available, naturally had sometime would be taken by the witnesses to carry the injured from their village to the Primary Health Centre. After medical examination Rajkumar was referred for further treatment to Kota. The F.I.R was registered at 5:30 AM. Therefore, the said F.I.R. is not inordinately delayed. Hence, the possibility of falsely implicating the appellant is ruled out. Therefore, the place where the written report was handed over

to the police is not a material issue in the present case.

7. Durga Shankar (P.W.1) tells us in his examination-in-chief that after beating the deceased, the appellant dragged his body to the roof of his house. This statement has been corroborated by Dwarakalal (P.W.3). This fact is equally corroborated by the site-plan (Ex.P/2). It is true that according to the site-plan, the appellant's house and Durga Shankar's house are adjacent to each other; the roofs of both the houses touch each other. But, it is absolutely unclear as to how and why the appellant would drag the body of the injured Rajkumar to the roof of his own house. To add to this mystery is the fact that the place, where the deceased was hit does not show the presence of blood. Therefore, the probability that it is the deceased, who went to the house of the appellant at the dead of the night wherein, altercation took place between the appellant and

the deceased cannot be ruled out.

8. Motive pales into insignificance in a case of direct evidence. In the present case, Ramniwas (P.W.2) is an injured eye-witness. The testimony of Ramniwas (P.W.2) alongwith testimoney of Durga Shankar (P.W.1) and Dwarakalal (P.W.3) is sufficient to prove the assault caused by the appellant upon the deceased person. Therefore, even if there is a contradiction about the motive of the alleged crime, it is not fatal to the case of the prosecution.

9. The post-mortem report clearly proves that the death of the deceased was neither natural nor accidental; it was, indeed, a homicidal death. However, the appellant is said to have caused a single injury on the head of the deceased. Considering the fact that the body of the deceased was discovered by the witnesses on the appellant's roof, consideirng the fact that this is a case of

single injury, we are of the opinion that the case does not fall within the ambit of Section 302 of I.P.C., but, instead it falls under the four corners of Section 304 part II of I.P.C.

10. For these reasons, we partly allow the appeal of appellant Chauth Mal and instead of Section 302 we convict him under Section 304 Part II I.P.C. Looking to the fact that the appellant has already undergone confinement for a period of more than six years and one month the ends of justice would be met in sentencing him to the period already undergone by him in confinement. We, however, acquit him of the charges under Sections 450 and 323 I.P.C. The appellant Chauth Mal, who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case.

11. The impugned judgment of learned trial Court stands modified, as indicated above.

(R.S.CHAUHAN),J. **(SHIV KUMAR SHARMA),J.**

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